

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

FRANCISCO VEGA, JR.,	) Case No.: 1:22-cv-00471 JLT EPG
	)
Plaintiff,	) ORDER ADOPTING FINDINGS AND
	) RECOMMENDATIONS TO GRANT, IN PART,
v.	) AND DENY, IN PART, PLAINTIFF’S MOTION
	) TO STRIKE DEFENDANTS’ AFFIRMATIVE
M. SOTO, et al.,	) DEFENSES
	)
Defendants.	) (Doc. 37)
	)

---

Plaintiff Francisco Vega, Jr., is a state prisoner proceeding pro se in this civil rights action filed on April 21, 2022, pursuant to 42 U.S.C. § 1983. This case proceeds on Plaintiff’s First Amendment retaliation claims against Defendants Soto, Borba, and Noujaime. (Doc. 15.) On January 11, 2023, Plaintiff file a motion to strike Defendants’ affirmative defenses. (Doc. 27.)

On March 27, 2023, the assigned magistrate judge issued findings and recommendations, recommending that Plaintiff’s motion to strike be granted in part and denied in part. (Doc. 37.) Specifically, the magistrate judge recommended that Defendants’ third (failure-to-mitigate), fourth (third-party defense), and sixth (Eleventh Amendment immunity defense) affirmative defenses, which Defendants waived in their opposition, be stricken without leave to amend; Defendants’ first affirmative defense stating that Plaintiff failed to “file a government claim as to Defendants and/or claims asserted in this action” be stricken with leave to amend; and Defendants be permitted to file an amended answer within 14 days of the entry of this Court’s order ruling on the motion to strike, if they

1 chose to do so. The findings and recommendations were served on all parties notified them that any  
2 objections were to be filed within 14 days after service. No party filed objections, and the time to do  
3 so has expired.

4 Despite this Court not issuing a final ruling on the motion to strike, Defendants filed a first  
5 amended answer on April 7, 2023, realleging the Eleventh Amendment immunity defense they waived  
6 in their opposition and which defense the magistrate judge recommended be dismissed with prejudice.  
7 (Doc. 39.) The Court assumes this was a drafting error and will strike the defense.

8 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducted a de novo review of this case.  
9 Having carefully reviewed the entire matter, the Court concludes the findings and recommendations  
10 are supported by the record and by proper analysis. Accordingly, the Court **ORDERS**:

- 11 1. The findings and recommendations issued on March 27, 2023 (Doc. 37), are **ADOPTED** in full.
- 12 2. Plaintiff's motion to strike Defendants' affirmative defenses (Doc. 27) is **GRANTED IN**  
13 **PART AND DENIED IN PART** as specified below.
- 14 3. Defendants' third, fourth, and sixth affirmative defenses from the initial answer (which  
15 Defendants have waived) are **STRICKEN** without leave to amend.
- 16 4. Defendants' first affirmative defense stating that Plaintiff failed to "file a government claim as  
17 to Defendants and/or claims asserted in this action" is **STRICKEN**. While the magistrate judge  
18 recommended leave to amend, Defendants have already filed an amended answer not raising  
19 this defense. Thus, the issue of leave to amend is moot.
- 20 5. The Court accepts Defendants' already-filed first amended answer (Doc. 39), with the exception  
21 that Defendants' fourth affirmative defense asserting Eleventh Amendment immunity, which  
22 Defendants previously waived, is **STRICKEN** without leave to amend.

23  
24 IT IS SO ORDERED.

25 Dated: **April 25, 2023**

  
UNITED STATES DISTRICT JUDGE